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MEMORANDUM

TO: Committee on Legal Services

FROM: Kip Kolkmeier, Office of Legislative Legal Services

DATE: December 12, 2016

SUBJECT: Rules of the Division of Motor Vehicles, Department of Revenue, concerning motor vehicle emissions inspection program – Rule 2, emissions inspection, 1 CCR 204-1, (LLS Docket No. 160422; SOS Tracking No. 2016-00394).¹

Summary of Problems Identified and Recommendations

Rules 1.0 through 12.0 of Rule 2 exceed the statutory authority of the Colorado Department of Revenue (CDOR) by requiring licensure of remote sensing device sites, remote sensing device units, and remote sensing device inspectors under the state motor vehicle emissions inspection program.

Section 42-4-305 (4), C.R.S., requires the executive director of CDOR to promulgate rules for the administration and operation of motor vehicle emissions inspection facilities. Section 42-4-305 (12), C.R.S., requires CDOR to promulgate rules regarding the "clean screen program." Section 42-4-305 (1)(a), C.R.S., empowers CDOR to license motor vehicle emissions inspection facilities. But Rules 2.0, 3.0,

¹ Under § 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rule-making authority. Under § 24-4-103 (8)(c)(I), C.R.S., the rules discussed in this memorandum will expire on May 15, 2017, unless the General Assembly acts by bill to postpone such expiration.

and 4.0 require licensure of certain emissions testing sites, equipment, and inspectors not delineated in the statute. Specifically, the named facilities licensed pursuant to section 42-4-305 (1)(a), C.R.S., do not include remote sensing device sites or remote sensing device units. In addition, the Rule provides for categories of emissions inspector licenses not contained in the statute. These definitions and license categories are integral to the entire regulatory licensing scheme. In this particular case, without the licensing provisions, it would be difficult or impossible to implement Rules 1.0 through 12.0. **Because Rules 1.0 through 12.0 of Rule 2 exceed CDOR's statutory authority, we recommend that Rules 1.0 through 12.0 of Rule 2 concerning licensure of motor vehicle emissions inspection facilities and emissions inspectors not be extended.**

Analysis

1. Various state agencies regulate the motor vehicle emissions inspection program.

The regulation of motor vehicle emissions inspection involves several state agencies. Generally speaking, the Colorado Department of Revenue (CDOR) is responsible for licensing of testing sites, inspectors, and mechanics, and the Colorado Department of Public Health and Environment (CDPHE) is responsible for environmental regulation. Within CDPHE, the Air Pollution Control Division (division) and the Colorado Air Quality Control Commission (commission) have the primary environmental regulatory authority. The Colorado Department of Transportation (CDOT) also plays a role in siting certain emissions testing locations. See **Addendum A** for the relevant statutes of CDOR, and see **Addendum B** for the relevant statutes of CDPHE.

2. CDOR has statutory authority to license emissions inspection locations and emissions inspectors.

Under section 42-4-305 (1)(a), C.R.S., the executive director of CDOR may license:

- Inspection and readjustment stations;
- Inspection-only facilities;
- Fleet inspection stations;
- Motor vehicle dealer test facilities; and
- Enhanced inspection centers.

Section 42-4-305 (1)(a), C.R.S., also permits the executive director to license emissions inspectors and emissions mechanics, both of which are defined terms under section 42-4-304, C.R.S. The statute does not delineate types or subcategories of emissions inspector licenses.

3. There is statutory authority to use remote sensing technology in emission inspections.

While the statutory provision for licensing inspection facilities and inspectors does not refer to remote sensing sites or remote sensing devices, there is statutory authority to utilize remote sensing technology in emissions inspections. It is important to note what a remote sensing device is, and how these devices are different from fixed inspection locations. A remote sensing device is a portable unit placed beside a roadway to measure emissions from individual vehicles. The devices utilized in Colorado use low-intensity infrared and ultraviolet beams, and can measure emissions of a vehicle without the need for the vehicle to stop or even slow down. These devices measure carbon monoxide, hydrocarbons, oxides and dioxides of nitrogen, and particulate matter emitted in tailpipe exhaust.

Remote sensing systems are referenced in section 42-4-304 (3.5), C.R.S., as operated under the "clean screen program." The executive director of CDOR may promulgate rules consistent with those of the commission for implementing the clean screen program.² However, it is the commission that must promulgate rules governing the operation of the clean screen program.³ Crucially, the statute provides authority for CDPHE and CDOR to enter into a contract to operate the clean screen program.⁴ This authority is subject to the "Procurement Code."⁵

² § 42-4-305 (12), C.R.S.

³ § 42-4-306 (23), C.R.S.

⁴ § 42-4-307 (10.5), C.R.S.

⁵ Articles 101 to 112 of title 24, C.R.S.

Remote sensing is also referenced in the statutory definition of an "enhanced emissions inspection."⁶ An enhanced emissions inspection would logically be conducted at an "enhanced inspection center."⁷ An enhanced inspection center under the statute is regulated as an "inspection-only facility."⁸ These statutory definitions are important because they reinforce that remote sensing is not a separate and distinct type of licensed facility.

4. CDOR's Rules 1.0 through 12.0 are intended to implement the statutory scheme for licensure of emissions inspection sites and emissions inspectors.

CDOR filed Rules 1.0 through 14.3 as a recodification of 1 CCR 204-11, and the Rules purport to make this recodification consistent with the vehicle emissions regulations promulgated by the commission under 5 CCR 1001-13. Both sets of rules include references to remote sensing sites and equipment governed by the "clean screen program." This program is publicly operated under the name "RapidScreen."⁹

Rules 1.0 through 12.0 of Rule 2 are attached in **Addendum C**. Rule 1.12 defines an "inspection station" to be "a business entity" or "remote sensing equipment." Rule 3.1 lists the five categories of inspection station licenses:

- Inspection-only facility;
- Fleet inspection station;
- Enhanced inspection center;
- RSD site; and
- RSD unit.

The first three of these mirror the statutory categories listed in section 42-4-305 (1)(a), C.R.S. The last two do not. "RSD site" is not defined in the Rule, but "RSD unit" is defined as a "remote sensing device that is certified by the Division and has been issued a license by the Department."¹⁰

Rule 4.0 provides for emissions inspector licenses. The Rule creates three categories of emission inspector licenses:

⁶ § 42-4-304 (8.5), C.R.S.

⁷ § 42-4-304 (10), C.R.S.

⁸ § 42-4-304 (17), C.R.S.

⁹ <http://www.aircarecolorado.com/rapidscreen>

¹⁰ Rule 1.17

- Inspection-only;
- Fleet; and
- Remote sensing.

As mentioned above, the statute does not delineate categories of inspector licenses.

5. Rules 1.0 through 12.0 contradict section 42-4-305, C.R.S., licensing provisions.

The definition of "inspection station" in Rule 1.12 is not found in statute. The categories of licenses listed in Rule 3.1 do not match the statutory categories for licensed facilities. The plain language of Rule 3.1 classifies RSD sites and RSD units as different and separate from the other inspection station categories, including inspection-only facilities and enhanced inspection centers. When the Rule categories of inspection stations are compared to the statutory categories of facilities that may be licensed, it is clear that remote sensing sites and remote sensing units cannot be encompassed by any of the five statutory licensure categories.

The Rule also has internal contradictions as it relates to the regulation of remote sensing sites and units. If RSD sites and RSD units are individually licensed inspection stations, then those licensees must comply with all regulatory requirements applicable to licensed inspection stations. It would be difficult or impossible for RSD site licensees and RSD unit licensees to comply with the following Rule provisions:

- Rule 3.6 states that the term of license for RSD sites is the lesser of 12 months or expiration of a use permit. Rule 3.2 provides for a term of 24 months for all inspection stations. Moreover, section 42-4-308 (4)(d), C.R.S., provides that licenses shall be valid for two years.
- Rule 3.11 states that all inspection stations must register and be in good standing with the secretary of state. It is unclear how a remote site or remote device would register with the secretary of state.
- Rule 5.2 states that all inspection stations must have the tools, reference manuals, etc., required by CDPHE Rule 11 on the "licensed premises;"
- Rule 5.3 states that a licensed inspector must be on premises during normal business hours;
- Rule 5.5 states that all records must be available for inspection by CDOR during normal business hours;
- Rule 5.6 states that all inspection stations must be able to accept U.S. mail;

- Rule 5.9 states that all inspection stations, except fleet inspection stations, must post licenses visible to the public;
- Rule 5.11 states that all inspection stations must meet various signage requirements;
- Rule 5.15 states that all inspection stations must possess rules and applicable statutory provisions;
- Rule 5.16 states that all inspection stations must have an application guide on the "licensed premises;"
- Rule 5.17 states that all inspection stations must have an oxygen sensor guide on premises; and
- Rule 5.18 states that all inspection stations must have lockable storage for controlled documents.

These regulatory licensing requirements are appropriate for fixed locations with operational personnel on site. Under the Rules, these requirements would be applied to mobile remote sensing facilities. Even if a remote sensing site or unit could comply with all of these regulatory requirements, remote sensing device sites and units still do not fall under one of the five statutorily permitted license categories.

6. While not regulated by license, remote sensing sites and units are governed by contract pursuant to the "Procurement Code."

As referenced above, CDPHE administers the remote sensing program.¹¹ In conjunction with CDOR, CDPHE may enter into a contract to provide the required remote sensing equipment and services.¹² The statute therefore provides for remote sensing to be administered by contract and not by license. In addition to any other remedy at law, section 42-4-312 (2)(a), C.R.S., empowers CDOR to suspend and revoke licenses or **"seek termination of the contractor's contract ..."** [Emphasis added] The agency is not without a statutory remedy for enforcing obligations of a remote sensing vendor.

¹¹ § 42-4-307 (6)(a), C.R.S.

¹² § 42-4-307 (10.5), C.R.S.

7. Licensure assumes greater authority by the agency and greater protection for a licensee than activities not regulated by license.

Whether a statute includes agency licensing authority is significant. Article II, section 3 of the Colorado Constitution, protects inalienable rights, including property rights. Article II, section 25 of the Colorado Constitution, requires due process in the protection of property rights. The "State Administrative Procedure Act" provides a comprehensive scheme for the process, rights, and responsibilities applicable to state licensure.¹³ CDOR's Rule recognizes the administrative procedure act and applies it to the licenses in Rules 11.1 and 11.2.

8. The agency is prohibited from establishing license categories not found in statute, and the general assembly may not delegate license classification authority to an agency.

In addition to constitutional and statutory provisions governing licenses, licensure is also governed by case law. The primary principle is that licensing determinations cannot be arbitrary or capricious. Moreover, the issuance, revocation, and renewal of licenses must be done by clear and settled policy.

In *Prouty v. Heron*,¹⁴ the Colorado Supreme Court considered a case with facts analogous to the Rules promulgated by CDOR. (See **Addendum D** for *Prouty*.) In *Prouty*, the state statute provided for licensure of engineers. The State Board of Engineer Examiners of Colorado subsequently promulgated rules establishing engineer licenses by classification. By rule, licenses were divided into separate classifications that limited licensees to practice only in a specific branch of engineering. The state board had, by rule, created types of licenses not contained in the statute. The Colorado Supreme Court stated that, once qualified for a license, a licensee acquires a valuable property right and is entitled to due process under both the United States and Colorado constitutions. This right cannot be abridged except for cause determined after given due notice and a fair and impartial hearing by an unbiased tribunal. The general assembly may not delegate to an agency the power to establish classifications of licenses not in statute. The court held that the state board's rule creating license categories not found in statute was void.

¹³ § 24-4-104, C.R.S.

¹⁴ *Prouty v. Heron*, 255 P.2d 755 (Colo. 1953).

Recommendations

Rules 1.0 through 12.0 of Rule 2 provide definitions and license categories that are not authorized by statute. These definitions and license categories are integral to the entire regulatory licensing scheme. In this particular case, without the licensing provisions, it would be difficult or impossible to implement Rules 1.0 through 12.0. We therefore recommend that Rules 1.0 through 12.0 of Rule 2 of the Colorado Department of Revenue concerning motor vehicle emissions inspection licensing not be extended because Rules 1.0 through 12.0 of Rule 2 exceed the agency's statutory authority concerning licensure of motor vehicle emissions inspections.

Addendum A

Colorado Department of Revenue Statutory Provisions

Rule-making Authority

42-4-305. Powers and duties of executive director - automobile inspection and readjustment program - basic emissions program - enhanced emissions program - clean screen program - rules. (12) The executive director shall promulgate such rules consistent with those of the commission as may be necessary for implementation, enforcement, and quality assurance and for procedures and policies that allow data collected from the clean screen program to be matched with vehicle ownership information and for such information to be transferred to county clerks and recorders. Such rules shall set forth the procedures for the executive director to inform county clerks and recorders of the emission inspection status of vehicles up for registration renewal.

42-4-304. Definitions relating to automobile inspection and readjustment program. As used in sections 42-4-301 to 42-4-316, unless the context otherwise requires:

(3.5) "Clean screen program" means the remote sensing system or other emission profiling system established and operated pursuant to sections 42-4-305 (12), 42-4-306 (23), 42-4-307 (10.5), and 42-4-310 (5).

Licensing Authority

42-4-305. Powers and duties of executive director - automobile inspection and readjustment program - basic emissions program - enhanced emissions program - clean screen program - rules. (1) (a) The executive director is authorized to issue, deny, cancel, suspend, or revoke licenses for, and shall furnish instructions to, inspection and readjustment stations, inspection-only facilities, fleet inspection stations, motor vehicle dealer test facilities, and enhanced inspection centers. The executive director shall provide all necessary forms for inspection and readjustment stations, inspection-only facilities, and fleet inspection stations. Motor vehicle dealer test facilities and enhanced inspection centers shall purchase necessary inspection forms from the vendor or vendors identified by the executive director. Said inspection and readjustment stations, inspection-only facilities, fleet inspection stations, motor vehicle dealer test facilities, and enhanced inspection centers shall be responsible for

the issuance of certifications of emissions control. The executive director is authorized to furnish forms and instructions and issue or deny licenses to, or cancel, suspend, or revoke licenses of, emissions inspectors and emissions mechanics. The initial biennial fee for an inspection and readjustment station license, an inspection-only facility license, a fleet inspection station license, a motor vehicle dealer test facility license, and an enhanced inspection center authorization shall be thirty-five dollars, and the biennial renewal fee shall be twenty dollars. The initial biennial fee for issuance of an emissions inspector license or an emissions mechanic license shall be fifteen dollars, and the biennial renewal fee shall be ten dollars. The fee for each transfer of an emissions inspector license or an emissions mechanic license shall be ten dollars. The moneys received from such fees shall be deposited to the credit of the AIR account in the highway users tax fund, and such moneys shall be expended by the department of revenue only for the administration of the inspection and readjustment program upon appropriation by the general assembly.

42-4-308. Inspection and readjustment stations - inspection-only facilities - fleet inspection stations - motor vehicle dealer test facilities - contractor - emissions inspectors - emissions mechanics - requirements. (d) Licenses shall be valid for two years.

42-4-312. Improper representation as emissions inspection and readjustment station - inspection-only facility - fleet inspection station - motor vehicle dealer test facility - enhanced inspection center. (2) (a) The department shall have authority to suspend or revoke the inspection and readjustment station license, inspection-only facility license, fleet inspection license, or motor vehicle dealer test facility license or to seek termination of the contractor's contract and require surrender of said license and unused certification of emissions control forms and verification of emissions test forms held by such licensee or contractor when such station, facility, or center is not equipped as required, when such station, facility, or center is not operating from a location for which the license or contract was issued, when the approved location has been altered so that it will no longer qualify as a licensed station or facility or authorized center, or when inspections, repairs, or adjustments are not being made in accordance with applicable laws and the rules and regulations of the department or commission.

24-4-104. Licenses - issuance, suspension or revocation, renewal. (1) In any case in which application is made for a license required by law, the agency, with due regard for the rights and privileges of all interested persons, shall set and conduct the proceedings in accordance with this article unless otherwise required by law.

(2) Every agency decision respecting the grant, renewal, denial, revocation, suspension, annulment, limitation, or modification of a license shall be based solely upon the stated criteria, terms, and purposes of the statute, or regulations promulgated thereunder, and case law interpreting such statutes and regulations pursuant to which the license is issued or required. Terms, conditions, or requirements limiting any license shall be valid only if reasonably necessary to effectuate the purposes, scope, or stated terms of the statute pursuant to which the license is issued or required.

(3) (a) No revocation, suspension, annulment, limitation, or modification of a license by any agency shall be lawful unless, before institution of agency proceedings therefor, the agency has given the licensee notice in writing of objective facts or conduct established upon a full investigation that may warrant such action and afforded the licensee opportunity to submit written data, views, and arguments with respect to the facts or conduct and, except in cases of deliberate and willful violation or of substantial danger to public health and safety, given the licensee a reasonable opportunity to comply with all lawful requirements. For purposes of this subsection (3), "full investigation" means a reasonable ascertainment of the underlying facts on which the agency action is based.

(b) The full investigation requirement specified in paragraph (a) of this subsection (3) shall not apply to licenses issued under articles 1.1, 9, 10, 11, 11.5, 13, 14, and 16 of title 40 or article 2 of title 42, C.R.S.

(4) (a) Where the agency has objective and reasonable grounds to believe and finds, upon a full investigation, that the licensee has been guilty of deliberate and willful violation or that the public health, safety, or welfare imperatively requires emergency action and incorporates the findings in its order, it may summarily suspend the license pending proceedings for suspension or revocation which shall be promptly instituted and determined. For purposes of this subsection (4), "full investigation" means a reasonable ascertainment of the underlying facts on which the agency action is based.

(b) The full investigation requirement specified in paragraph (a) of this subsection (4) shall not apply to licenses issued under articles 1.1, 9, 10, 11, 11.5, 13, 14, and 16 of title 40 or article 2 of title 42, C.R.S.

(5) A proceeding for the revocation, suspension, annulment, limitation, or modification of a previously issued license shall be commenced by the agency upon its own motion or by the filing with the agency of a written complaint, signed and

sworn to by the complainant, stating the name of the licensee complained against and the grounds for the requested action.

(6) No previously issued license shall be revoked, suspended, annulled, limited, or modified, except as provided in subsection (3) of this section, until after hearing as provided in section 24-4-105.

(7) In any case in which the licensee has made timely and sufficient application for the renewal of a license or for a new license for the conduct of a previously licensed activity of a continuing nature, the existing license shall not expire until such application has been finally acted upon by the agency, and, if the application is denied, it shall be treated in all respects as a denial. The licensee, within sixty days after the giving of notice of such action, may request a hearing before the agency as provided in section 24-4-105, and the action of the agency after any hearing shall be subject to judicial review as provided in section 24-4-106.

(8) An application for a license shall be acted upon promptly, and, immediately after the taking of action on such application by an agency, a written notice of the action taken by the agency and, if the application is denied, the grounds therefor shall be given to the applicant. The giving of such notice shall be by personal service upon the applicant or by mailing the same to the address of the applicant as shown on the application or as subsequently furnished in writing by the applicant to the agency.

(9) If an application for a new license is denied without a hearing, the applicant, within sixty days after the giving of notice of such action, may request a hearing before the agency as provided in section 24-4-105, and the action of the agency after any hearing shall be subject to judicial review as provided in section 24-4-106.

(10) Written notice of the revocation, suspension, annulment, limitation, or modification of a license and the grounds therefor shall be served forthwith on the licensee personally or by mailing by first-class mail to the last address furnished the agency by the licensee.

(11) A limitation, unless consented to by the applicant, on a license applied for shall be treated as a denial. A modification, unless consented to by the licensee, of a license already issued shall be treated as a revocation.

(12) In an appropriate case a revoked or suspended license may be reissued.

(13) (a) Any applicant who, under oath, supplies false information to an agency in an application for a license commits perjury in the second degree, as defined in

section 18-8-503, C.R.S. Any such application shall bear notice, in accordance with section 18-8-501 (2)(a)(I), C.R.S., that false statements made therein are punishable.

(b) On and after January 1, 1985, an agency shall not require that information contained in an application for a license be affirmed to before a notary.

Contracting Authority

42-4-307. Powers and duties of the department of public health and environment - division of administration - automobile inspection and readjustment program - basic emissions program - enhanced emissions program - clean screen program.

(10.5) (a) For the clean screen program and the Denver clean screening pilot study, the department of public health and environment and the department of revenue may, pursuant to the "Procurement Code", articles 101 to 112 of title 24, C.R.S., enter into a contract with a contractor for the purchase of equipment, the collection of remote sensing and other data and operation of remote sensing and support equipment, data processing and vehicle ownership matching in cooperation with the executive director, and collection of remote sensing and other data for the Denver clean screening pilot study, including analysis of the results of such study and report preparation. Under any such contract the department of public health and environment and the department of revenue may purchase approved remote sensing and support equipment or authorize the use of a qualified contractor or contractors to purchase approved remote sensing and support equipment for use in the clean screen program. Notwithstanding any contrary provision in the "Procurement Code", articles 101 to 112 of title 24, C.R.S., the clean screen contract may be incorporated into any contract or renewed contract pursuant to subsection (10) of this section. The contractor retained pursuant to this subsection (10.5) shall be the same as the contractor retained pursuant to subsection (10) of this section. The contractor shall make one-time transfers into the clean screen fund created in section 42-3-304 (19) in a total amount necessary to cover computer programming costs associated with implementation of House Bill 01-1402, enacted at the first regular session of the sixty-third general assembly, in the following order:

(I) Up to thirty thousand dollars from the contractor's revenues;

(II) Up to thirty thousand dollars from the public relations account provided for in the contract; and

(III) Up to forty thousand dollars from the technical center account provided for in the contract.

Addendum B

Colorado Department of Public Health and Environment Statutory Authority

42-4-306. Powers and duties of commission - automobile inspection and readjustment program - basic emissions program - enhanced emissions program - clean screen program.

(23) (a) The commission shall promulgate rules governing the operation of the clean screen program. Such rules shall authorize the division to commence the clean screen program in the basic emissions program area commencing as expeditiously as possible. Such rules shall authorize the division to extend, if feasible, the clean screen program to other parts of the state upon request of the lead air quality planning agencies for each respective area. Such rules shall govern operation of the clean screen program pursuant to the contract or service agreement entered into under section 42-4-307 (10.5). Such rules shall determine the percentage of the vehicle fleet targeted for the clean screen program, which percentage shall develop a target of the eligible vehicle fleet that meets air quality needs. Such rules shall specify emission levels for vehicles in the same manner as for other vehicles in the emissions program. The commission may, upon written request of the Pikes Peak area council of governments, exclude the El Paso county portion of the basic emissions program area from the clean screen program if the department of public health and environment receives written notification from the Pikes Peak area council of governments to such effect by June 1, 2001.

(b) The rules promulgated pursuant to paragraph (a) of this subsection (23) may also authorize the division to commence the clean screen program in the enhanced emissions program area commencing January 1, 2002, or as soon thereafter as is practical. The clean screen program may be implemented in the enhanced emissions program area only if the commission makes such a determination on or after July 1, 2001.

42-4-307. Powers and duties of the department of public health and environment - division of administration - automobile inspection and readjustment program - basic emissions program - enhanced emissions program - clean screen program.

(6) (a) (I) The division shall administer, in accordance with federal requirements, the on-road remote sensing program.

(II) Pursuant to commission rule and based on confirmatory tests at an emissions technical center or emissions inspection facility that identify such vehicles as exceeding applicable emissions standards, off-cycle repairs may be required for noncomplying vehicles.

Addendum C

DEPARTMENT OF REVENUE

Division of Motor Vehicles

1 CCR 204-11 RECODIFIED AS 1 CCR 204-1

RULE 2 EMISSIONS INSPECTION

Basis: The statutory bases for this rule are sections 42-4-301 through 42-4-316.5, C.R.S.

Purpose: The purpose of this rule is to establish the licensing requirements and enforcement standards for the Emissions Inspection Program, and set out processes for violations, sanctions and administrative hearings. This rule does not apply to the “basic program” as such stations are no longer in operation.

1.0 DEFINITIONS

1.1 Additional definitions and substantive regulations are found in the Air Quality Control Commission’s Regulation 11, 5 CCR 1001-13.

1.2 “Analyzer Lockout”: A temporary interruption of emissions testing caused by malfunctioning equipment or failure of an equipment audit.

1.3 “AQCC”: Means the Colorado Air Quality Control Commission. The AQCC is the rulemaking body responsible for Regulation 11; 5 CCR 1001-13.

1.4 “Certification of Emissions Control” or “CEC”: Either a Certification of Emissions Compliance or a Certification of Emissions Waiver issued to the owner of a vehicle to indicate the status of inspection requirement compliance of the vehicle.

1.5 “Compliance Document”: A document consisting of the vehicle inspection data and the Certification of Emission Control.

1.6 “Department”: The Colorado Department of Revenue.

1.7 “Division”: The Air Pollution Control Division of the Colorado Department of Public Health and Environment.

1.8 “Emissions Extension”: Authorization for a Colorado-registered vehicle temporarily located and operated outside of Colorado to renew registration.

1.9 “Executive Director”: The executive director of the Colorado Department of Revenue or designee responsible for the enforcement and licensing functions of the emissions program.

1.10 “Inoperable”: Major structural damage or catastrophic mechanical failures that prevent a vehicle from being emissions tested.

1.11 “Inspector Number”: The numeric identifier issued by the Department to every licensed emissions inspector.

1.12 “Inspection Station”: A business entity or remote sensing equipment that is licensed to perform vehicle emissions inspections within the emissions program area.

1.13 “Letter of Qualification”: A letter issued by the Division indicating that an applicant has passed the written qualification test to become a licensed inspector or renew an inspector license.

1.14 “Normal Business Hours”: Monday through Friday, 8:00 a.m. through 5:00 p.m., with the exception of national holidays. Expanded hours may be required by contract.

1.15 “Regulation 11”: The regulation adopted by the AQCC governing the motor vehicle emissions inspection program for the control of air contaminant emissions from motor vehicles.

1.16 “Reinspection” (After-Repairs Test): A subsequent inspection performed after a vehicle has failed the initial inspection and been repaired.

1.17 “RSD Unit”: A remote sensing device that is certified by the Division and has been issued a license by the Department.

1.18 “VIN Verification”: A form issued by the Department to record vehicle information obtained from a physical inspection of a vehicle.

1.19 “Vehicle Identification Number” or “VIN”: A unique number assigned by a vehicle manufacturer or State that identifies a given vehicle.

1.20 “Vehicle Inspection Report” or “VIR”: A document issued to the owner or operator of a motor vehicle that indicates the vehicle’s emissions status.

1.21 “Waiver/Hardship Waiver”: A VIR issued by the Department indicating that the emissions from the vehicle do not comply with applicable emissions standards after inspection, adjustments, and emissions related repairs in accordance with section 42-4-310, C.R.S.

2.0 GENERAL LICENSING REQUIREMENTS

2.1 Application for station and inspector emissions licenses must be made on forms issued by the Department.

2.2 All licensees must comply with applicable Colorado state statutes, Regulation 11, and Department rules.

2.3 Licensees shall conduct only those inspections authorized by the type of license held.

2.4 Fees collected for license applications and renewals are non-refundable.

2.5 Inspection stations or inspectors must not perform an emissions test under an expired license.

2.6 Only a business or individual holding a valid emissions testing license issued by the Department may issue a VIR.

2.7 Licenses obtained by misrepresentation or false statements to the Department will be revoked.

2.8 No individual or business shall represent or allow itself to be represented as a licensed emissions inspector or licensed emissions inspection station unless it has a valid license issued by the Department.

2.9 Each licensee must maintain a current, valid mailing address with the Department.

2.10 Licensees must cooperate with the Department during the conduct of audits, investigations, and complaint resolution.

2.11 All fines assessed by the Department for violations of statutes, rules and regulations, or procedures, must be paid within the time period specified by the Department. The Department may revoke a license and take other action to collect unpaid fines.

2.12 The Department may deny a license application from an individual or business if the individual, or any individual with an ownership interest in the business, has had an emissions program license revoked or suspended by the Department.

2.13 License renewal applications received after the expiration date will be subject to the requirements for a new license, including the fee.

3.0 STATION LICENSES

3.1 Inspection station licenses are available in the following categories: inspection-only facility, fleet inspection station, enhanced inspection center, RSD site, and RSD unit.

3.2 Inspection station licenses are valid for 24 months beginning on the date issued and expiring at midnight twenty-four months later.

3.3 Inspection stations may only perform the functions allowed under the type of license issued.

3.4 Inspection station licenses are valid only at the location for which they are issued.

3.5 All RSD sites must be approved by the Division and licensed by the Department prior to providing services.

3.6 RSD Site licenses are issued for the lesser of 12 months or until the expiration of the use permit for that specific location.

3.7 RSD units can operate only at licensed sites.

3.8 Obtaining RSD site licenses is the sole responsibility of the RSD contractor. Document and site packets must contain site setup photos with a sketch of all equipment setup locations and dimensions by reference to a permanent benchmark. RSD sites must be set up and operated in a safe and prudent manner.

3.9 Transfer or sale of a business or any other change in ownership must be reported to the Department and requires a new license application and associated fees.

3.10 Inspection station licenses may not be transferred, loaned, or used by any individual or business other than the individual or business identified on the application.

3.11 All inspection stations must be and remain registered and in good standing with the Secretary of State.

3.12 Inspection stations must employ or contract with at least one licensed emissions inspector.

3.13 A licensee found to have violated local safety, occupancy, zoning, use, business and sales tax licensing laws, local ordinances, or other regulations may be suspended or revoked.

4.0 INSPECTOR LICENSES

4.1 Emissions inspector licenses are available in the following categories: inspection-only, fleet, and remote sensing.

4.2 An emissions inspector who is employed by more than one inspection station must obtain an inspector license with each employer. An emissions inspector who is employed by one employer with multiple inspection stations is only required to hold one license.

4.3 As a condition of licensure, applicants for emissions inspector licenses must comply with all regulations adopted by the AQCC and demonstrate the ability to perform a proper inspection.

4.4 Applicants must be employed by an inspection station.

4.5 Applicants must possess a current letter of qualification from the Division when applying for an emissions inspector license or license renewal.

4.6 Fleet or inspection-only facility inspectors who change employers must have their license transferred by the Department to the new place of employment prior to performing emissions tests.

4.7 Inspector qualifications do not transfer between license categories.

4.8 The Department may require a licensed emissions inspector to demonstrate proficiency in any elements of emissions testing at any time. Failure to demonstrate proficiency is cause for license suspension or revocation.

5.0 INSPECTION STATION OPERATIONS

5.1 No inspection station shall perform an emissions inspection unless it has the facilities and equipment required to safely and correctly perform all elements of an emissions inspection.

5.2 Inspection stations must have all the tools, reference manuals, and diagnostic equipment required by Regulation 11 on the licensed premises and in proper working order when open for business.

5.3 Inspection stations must have at least one licensed emissions inspector on the premises when open for business.

5.4 Inspection stations that serve the public must be open for business during normal business hours and as required by contract.

5.5 Inspection stations must have records available for inspection by Department personnel at all times during normal business hours.

5.6 Inspection stations must be capable of receiving U.S. mail.

5.7 Owners, operators, and employees of enhanced inspection centers and inspection-only facilities must not repair, service, sell parts, or sell or lease motor vehicles and must not refer customers to particular providers of motor vehicle repair services.

5.8 Each inspection station must pay the Department the appropriate fees for all VIRs issued for passing inspections. An inspection station whose license is cancelled, suspended, or revoked remains liable for any fees owed the Department.

5.9 Inspection stations, other than fleet inspection stations, must post licenses in a location visible to the public and subject to approval by the Department.

5.10 Fleet inspection stations may only perform emission inspections on vehicles in their fleet.

5.11 Signs:

5.11.1 All inspection stations must post a sign designating the licensed premises as an official emissions testing location.

5.11.2 Enhanced inspection centers and inspection-only facilities must post a sign stating that only inspections are available and no repairs or adjustments can be performed.

5.11.3 All inspection stations must post the fee charged for an emissions inspection.

5.11.4 All inspection stations that perform VIN inspections must post the VIN inspection fee.

5.11.5 All inspection stations must post all signs issued by the Department.

5.11.6 All signs must be placed in a conspicuous location on the licensed premises, visible to the public, and are subject to approval by the Department.

5.12 All inspections must be performed only at the licensed inspection station location.

5.13 A motor vehicle may be rejected by an emissions inspector if the vehicle is unsafe to test or cannot physically be inspected. The inspector must provide to the vehicle owner, in writing, a description of the vehicle to include VIN, make, model,

and year; the location of the inspection station; the reason(s) for the rejection; date of the rejection; and the inspector who rejected the vehicle.

5.14 Enhanced inspection centers must provide a Department approved brochure and program information pamphlet to each customer upon completion of the inspection when a vehicle fails the inspection.

5.15 Inspection stations must possess current Department rules, Regulation 11, and related sections from Colorado Revised Statutes.

5.16 Inspection stations must have on the licensed premises an emissions control systems application guide approved by the Department, which contains a quick reference for emissions control systems and their uses on specific make, model, and year vehicles, either in printed or electronic medium.

5.17 Inspection stations must have on the premises a current Oxygen Sensor Guide obtained from any Division technical center or purchased from another source.

5.18 Inspection stations must secure all controlled documents in lockable storage.

5.19 No addition or modification can be made to an analyzer unless pre-approved by the Division or the Department.

5.20 No person shall, or attempt to, tamper with or circumvent any system or function of an analyzer.

5.21 Inspection station owners and operators must prevent tampering, circumvention, and unauthorized use of analyzers.

5.22 Analyzer lockout conditions can only be removed by authorized service personnel or representatives of the Department or Division.

5.23 The license of an inspection station that no longer meets licensing requirements may be revoked, suspended, or denied renewal.

5.24 RSD Operations:

5.24.1 The Department must be notified in writing, e-mail or other electronic means of all licensed RSD testing schedules and locations prior to testing. RSD units must not test at any time or location other than those for which the Department has been notified.

5.24.2 RSD results must be reported to the Department no later than 11:59 p.m. on the last day of the month or as otherwise agreed by the Department and the contractor.

6.0 DISTRIBUTION OF COMPLIANCE DOCUMENTS

6.1 Licensees must ensure that all compliance documents issued are complete, accurate, and legible.

6.2 Upon completion of an inspection, the VIR must be given to the customer along with all original documents (i.e. registration, failed VIRs, etc.).

6.3 Inspectors must explain to the customer the purpose of the VIR, including the results of the inspection.

6.4 If a vehicle fails the inspection, the inspector must:

6.4.1 Issue the VIR;

6.4.2 Advise the customer of the failure;

6.4.3 Provide a repair information pamphlet;

6.4.4 Explain that the vehicle is eligible for a free reinspection at any enhanced inspection center if the vehicle is returned within ten calendar days. If the inspection was completed at an inspection-only facility, the vehicle must be returned to the facility where the original inspection was performed for the free reinspection.

6.5 If a vehicle inspection cannot be completed, the inspector must:

6.5.1 Issue the VIR;

6.5.2 Explain to the customer that the inspection could not be completed and the reasons therefore;

6.5.3 The fee for an incomplete inspection need not be refunded unless caused by the inspection station or the inspector.

6.6 Compliance documents that are damaged during the printing process must be reprinted using the analyzer reprint procedure.

7.0 VERIFICATION OF VEHICLE IDENTIFICATION NUMBER (Form DR 2698)

7.1 Licensed emissions inspectors employed by emissions testing inspection stations may perform a VIN inspection for no more than the posted fee.

7.2 A DR 2698 with any alteration or missing entries is invalid.

7.3 Vehicles with altered, illegible, multiple or missing vehicle identification numbers (VIN) must be directed to the Colorado State Patrol for verification.

7.4 An inspection station under suspension by order of the Department must not perform VIN inspections.

8.0 SECURITY AND RETENTION OF DOCUMENTS

8.1 All records related to the emissions program must be maintained by the licensee until retrieved or ordered for destruction by the Department.

8.2 All unused controlled documents must be kept in lockable storage and be available only to licensed emissions inspectors or other personnel authorized by the Department.

8.3 Missing or stolen documents must be reported to the Department within 24 hours of discovery.

8.4 Inspection stations may only issue vehicle inspection report forms obtained from the Department or its authorized agent.

8.5 Every damaged vehicle inspection report must be retained until the next audit by the Department.

9.0 USE OF INSPECTOR NUMBER AND SECURITY CODES

9.1 Each licensed emissions inspector will be assigned a confidential code to gain access to the analyzer.

9.2 Access codes and inspector numbers will be added and deleted by Department or Division personnel.

9.3 An access code must be used only by the licensee to whom it was assigned. Sharing of access codes is prohibited and is grounds for sanctions.

9.4 An emissions inspector number printed on a VIR is an electronic signature and is deemed certification by the licensee assigned that number that the licensee conducted the emissions test accurately and completely.

9.5 Emissions inspectors must report any unauthorized use of an access code to the Department within 24 hours of discovery.

9.6 Emissions inspectors are responsible for all VIRs bearing their numbers.

9.7 The inspector number must be part of the RSD data record.

9.8 Inspectors are responsible for any violation or fraudulent inspection which occurs using his or her inspector number. RSD inspectors are responsible for all data records bearing their numbers.

10.0 AUDITS

10.1 The Department monitors the activities of all licensed inspection stations and inspectors through ongoing site inspections, audits, investigations, consumer complaints, data analysis, performance observation, and other quality assurance methods.

10.2 The Department may conduct on-site audits at any time during posted business hours.

10.3 Inspection records, equipment, and licensed personnel must be available on site to the Department during posted business hours.

10.4 A notice of audit determination will be provided to the inspection station upon completion of the audit.

10.5 In the event of a lane equipment audit failure, the equipment must be recalibrated and rechecked.

If the recalibration does not address the problem, the analyzer will be locked out until repairs are made and the equipment passes an audit.

10.6 The Department may conduct an audit of a RSD unit at any time while the unit is set up and operational at an approved site.

10.6.1 The contractor must provide the Department with daily notification of the status and location of each RSD unit.

10.6.2 The Department may require that a daily service log be maintained on each specific unit, and available for inspection by the Department auditors at each approved site.

10.6.3 All RSD sites must maintain current permit, licensing, and approval documentation for each operable site, available for inspection at the time and place of the Department roadside audits.

10.6.4 The Department may require a current Accepted Test Protocol (ATP) document for any RSD unit that has been out of service for a period over 30 days, or if any period of time is unaccounted for in the service log.

10.6.5 A notice of audit determination will be provided upon completion of the audit.

10.6.6 In the event of an audit failure or an incomplete audit, the associated inspection data will be identified and suspended from processing until the Division can determine the status of the RSD unit and the data in question.

10.6.6.1 A unit that passes the Division's evaluation may be placed back into service and the associated data approved for processing.

10.6.6.2 A unit that fails the Division's evaluation will not be placed back into service until repairs are made and approved by the Division. The associated data will be deemed invalid and ineligible for processing.

11.0 VIOLATIONS AND SANCTIONS

11.1 The Department may summarily suspend a license pursuant to section 24-4-104(4)(a), C.R.S.

11.2 The Department may suspend or revoke a license pursuant to section 24-4-104(3)(a), C.R.S.

11.3 The Department may suspend or revoke the license of a licensee convicted as defined in section 42-1-102(19) C.R.S., of a misdemeanor under the Colorado Air Pollution Prevention and Control Act, section 25-7-122.1, C.R.S., convicted under section 42-4-313, C.R.S., or of a licensee that has violated the Motor Vehicle Repair Act, section 42-9-101, et. seq., C.R.S.

11.4 The Department may suspend or revoke the license of a licensee who impedes the Department's ability to oversee, audit, or investigate matters under the Emissions Inspection Program, including behavior that is threatening, disruptive, or abusive.

11.5 The Department may conduct a monthly performance review with contractors. Any violation discovered may result in sanctions.

11.6 A licensee who receives notice pursuant to subsection 11.3 may within 30 days after the date of the notice:

11.6.1 Submit a written response setting forth data, views, and arguments with respect to the facts or conduct; or,

11.6.2 Comply with all lawful requirements or submit a plan acceptable to the Department to bring the licensee into compliance with all lawful requirements.

11.7 The Department may institute a proceeding to suspend or revoke a license pursuant to subsection 11.3 if the Department determines that the licensee failed to:

11.7.1 Submit a written response pursuant to subsection 11.6, or that the response does not rebut the evidence of such facts or conduct; or,

11.7.2 Comply with all lawful requirements or the plan submitted by the licensee is not acceptable to the Department.

11.8 Such proceeding shall be instituted by filing a Notice to Set and Order to Show Cause with the Hearings Division as set forth in Rule 12.1.

11.9 Any Notice from the Department, required pursuant to this rule, will be served personally or mailed via first class mail addressed to the last address furnished to the Department by the licensee.

12.0 ADMINISTRATIVE HEARINGS

12.1 Except as otherwise provided in section 42-4-312, C.R.S., all enforcement actions will proceed in accordance with the “State Administrative Procedure Act”, article 4 of Title 24, C.R.S.

Addendum D

Caselaw

Prouty V. Heron, 7 Colo. 168

Supreme Court of Colorado

March 9, 1953, Decided

No. 16,590

Reporter

127 Colo. 168 * | 255 P.2d 755 ** |

Prouty et al. v. Heron

Subsequent History:

Rehearing Denied April 6, 1953.

Counsel: Mr. John W. Metzger, Attorney General, Mr. Allen Moore, Deputy, Mr. Donald C. McKinlay, Assistant; Mr. Duke W. Dunbar, Attorney General, Mr. H. Lawrence Hinkley, Deputy, Mr. Charles M. Soller, Assistant, Mr. Frank A. Wachob, Assistant, Mr. James D. Parriott, Jr., Assistant, for plaintiffs in error.

Mr. George K. Thomas, for defendant in error.

Mr. Louis I. Hart, Jr., amicus curiae.

Judges: En Banc. Mr. Justice Moore delivered the opinion of the court.

Opinion by: MOORE

Opinion

[*169] [**755] Defendant in error was plaintiff in the trial court and we will herein refer to him as plaintiff. Plaintiffs in error were defendants in the trial court and we will hereinafter refer to them as defendants or board.

Plaintiff filed his complaint in the district court of the City and County of Denver, in which he sought to enjoin defendants from classifying qualified engineers as to specific branches of their profession and thereby limiting the practice of such engineers to those phases of the profession properly belonging to the classification in which such engineers were placed by the board. Plaintiff further sought by court order to correct the roster, and licensing cards, issued by the board to registered engineers, in such manner as to entitle registrants to practice the profession of engineering [**756] without limitation as to class or branch of the profession; and for a declaratory judgment holding certain rules and regulations [*170] adopted by the defendant board to be void. He further sought to enjoin the printing and publication, by defendants, of a pamphlet containing, among other things, a roster of engineers authorized to practice their profession in Colorado and the branch of the profession in which each engineer had been classified.

November 4, 1949, the trial court granted the relief sought by plaintiff, and thereafter the board brought the case to this court by writ of error to review that judgment.

Chapter 161, of the 1951 Session Laws of Colorado, relating to "Engineering and Land Surveying," became effective March 29, 1951, and pursuant to joint motion of the parties the cause was remanded to the trial court for the purpose of permitting defendants to file a motion for modification of the judgment and for dissolution of the injunction. Said motion was based upon the ground that the stated act of the legislature expressly commanded the performance by defendants of those acts which the trial court had enjoined, and fully authorized the board to do those things of which plaintiff complained.

Plaintiff filed an answer to defendants' motion, in which the 1951 Act of the legislature was attacked on constitutional grounds, which we hereinafter consider. Nine witnesses were examined at the hearing which followed. November 16, 1951, the motion for modification of the judgment and for dissolution of the injunction was denied.

The trial court stated that chapter 161, Session Laws of Colorado 1951, operated as an "infringement on petitioner's rights under the Fourteenth Amendment and the pertinent section of our own Article 2 of the Colorado Constitution, the court holds the present act unconstitutional." The trial court accordingly refused to dissolve the injunction.

Facts essential to the proper solution of this controversy are as follows: Plaintiff was duly licensed to practice [*171] the profession of engineering in the State of Colorado on May 12, 1921, under authority vested in the State Board of Engineer Exam-

iners by an Act of the General Assembly approved April 9, 1919. S.L. '19, c. 185. This license contained, inter alia, the following statement: "The State Board of Engineer Examiners of Colorado having determined that Kenneth A. Heron has fully complied with said act and is entitled to a license to practice the Profession of Engineering, do hereby license him to practice said profession." Thereafter plaintiff left the State of Colorado, returning in the year 1945, and in December of that year he reapplied for registration as a professional engineer in Colorado, paid the required fee, and received a registration card certifying that he was especially qualified to practice in the branch of civil engineering. Plaintiff protested the limitation implied by this qualified registration, and requested a license without limitation or classification, but this never was issued.

In December, 1947, plaintiff again applied for a renewal license to practice his profession for the year 1948 and requested that his registration be carried on the records of the defendant board as "professional engineer" without limitation or classification. The request, however, was denied and again the registration card was issued stating that plaintiff was qualified in the branch of civil engineering. Plaintiff demanded a hearing, which was denied.

In the year 1949 plaintiff again was registered as an engineer qualified in the branch of civil engineering, and on June 23rd of that year he, by his attorney, protested such limited registration and made formal demand on the board for the withdrawal of all limitations on his license to practice engineering in Colorado, and demanded a correction of his registration, including the license card and the roster of engineers, in such manner as to show that he was licensed to practice the profession of engineering without qualification or limitation. [*172] Upon refusal of defendant board to comply with this demand, suit was instituted.

[**757] In the complaint, counsel for plaintiff set forth the foregoing facts and alleged that defendant board was about to print and publish for free distribution a pamphlet containing, among other things, a roster of registered engineers and the classification to which each was assigned, and further alleged that there was no authority under the law for the printing and distribution of such a roster.

Defendant board in its answer set out the regulations which it had adopted purporting to authorize the classification of engineers and publication of the roster of which plaintiff complained. In the pleadings two questions were raised which were correctly stated by the trial court as follows:

"First: Has the State Board of Examiners of Engineers and Land Surveyors of the State of Colorado the right and authority to license an engineer and to issue a certifi-

cate limiting and qualifying such practice by the words such as 'Civil,' 'Electrical,' 'Mechanical,' etc.

"Second: Is there authority in the law for the printing and free distribution of the annual report and roster of engineers to be paid out of the funds collected by said Board as license fees."

No specific authority for the classification of professional engineers was contained in the applicable statute. Its validity depends upon the legality of certain rules and regulations adopted by the board. We deem it unnecessary to set them forth in detail. Suffice it to say that the trial court correctly held that the regulations, upon which the board relied as authority for their classification of engineers, and for the publication and distribution of a roster including such classifications, were void.

Chapter 161, Session Laws of Colorado 1951, as hereinbefore stated, was enacted subsequent to the entry of the trial court's judgment which granted the relief [*173] sought by plaintiff. Upon reconsideration of the case on the questions raised by the motion to dissolve the injunction, and the answer thereto which was filed by plaintiff, the trial court considered the 1951 Act at length and stated, *inter alia*:

"The court has given serious and careful consideration as to whether the 1951 Act, Chapter 161, is unconstitutional on the following grounds: First: That it is discriminatory; Second: That it constitutes special legislation; Third: That there was an unauthorized delegation of power by the Legislature to the Board and that such delegation is arbitrary, capricious and unreasonable."

The Attorney General, on behalf of defendant board, asserted in his brief that the questions legitimately raised concerning the subject matter of the action were: "(a) Whether or not there was an unconstitutional delegation of legislative authority to the Board; (b) whether or not the legislature unlawfully granted legislative authority for the printing and distribution of classified rosters and cards; (c) whether or not the classification directed by the legislature constituted a deprivation of property without due process of law; (d) whether or not classification directed by the legislature was discriminatory." Consideration and resolution of two of these queries will suffice to determine the rights of plaintiff in the instant action, and to more clearly define the powers of the legislature with regard to the classification of those who in the future may apply for a license to practice the profession of engineering in all or any of its branches.

Questions to be Determined.

[1] First: *Is the right to practice a profession, once legally granted, within the rights protected by the Constitutions of the United States and of the State of Colorado, which provide that no person shall be deprived of life, liberty or property without due process of law?*

This question is answered in the affirmative. Our [*174] court has heretofore stated that the professions of law, medicine and dentistry are generally considered as learned professions, and that, "Neither is an ordinary [**758] trade or calling which all citizens alike may pursue." *People v. Painless Parker*, 85 Colo. 304, 275 Pac. 928. The profession of engineering is no "ordinary trade or calling." That profession also involves "personal skill, presupposes a period of novitiate, intensive preparation, due examination and admission, and that the licentiate's sheepskin is solely his own." *State Board of Dental Examiners v. Savelle*, 90 Colo. 177, 8 P. (2d) 693. In *Chenoweth v. State Board of Medical Examiners*, 57 Colo. 74, 141 Pac. 132, our court said that the right to practice a learned profession was a "valuable right."

The right to practice such a profession has been recognized as a "valuable right" or a "property right" in other jurisdictions. *State v. Schultz*, 11 Mont. 429, 28 Pac. 643; *Baker v. Department of Registration*, 78 Utah 424, 3 P. (2d) 1082; *Bley v. Board of Dental Examiners*, 87 Cal. App. 193, 261 Pac. 1036. From the case of *Abrams v. Jones*, 35 Idaho 532, 207 Pac. 724, we quote the following: "Where the state confers a license upon an individual to practice a profession, trade or occupation, such license becomes a valuable personal right which cannot be *denied or abridged* in any manner except after due notice and a fair and impartial hearing before an unbiased tribunal." (Emphasis supplied.)

We are in accord with the authorities above cited and approve the language quoted therefrom as being applicable to this controversy. In the instant case plaintiff was duly licensed to practice the profession of engineering. He was not limited to any particular branch of that profession. We hold that one who has qualified for admittance and license to practice engineering without restriction, under the standards applicable at the time of admission, thereby acquires a valuable right fully protected and covered by the due process clause of the Federal and State Constitutions. It follows, therefore, [*175] that the legislature cannot by statute deny or abridge that right in any manner except for cause and "after due notice and a fair and impartial hearing before an unbiased tribunal."

Every statute providing for the licensing of those engaged in a learned profession contains, or can provide, procedures for suspension or revocation of a license held by one who actually is found to be unfit or unworthy to continue in the practice. This is a sufficient protection to the public and affords ample opportunity for a reasonable

exercise of the police power in the public interest. The trial court was correct in holding that, by the statute in question, the plaintiff was deprived of a valuable right without due process of law.

Second: Assuming that the profession of engineering is one which may be divided into branches, and that those licensed to practice may be limited to a particular branch thereof by proper statutory enactment, does chapter 161 of the 1951 Session Laws of Colorado, illegally delegate legislative powers to administrative officials?

This question is answered in the affirmative. Upon the question of whether the profession of engineering is subject to regulation by classification into branches, we express no opinion. For the purpose of testing the 1951 engineering statute with reference to the above question we assume that the profession might conceivably be thus regulated. The statute contains, inter alia, the following provisions:

"The term 'professional engineer' within the meaning and intent of this Act shall mean a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as hereinafter defined, as attested by his legal registration as a professional engineer.

"The term 'practice of engineering' within the meaning [*176] and intent of this Act shall mean any professional service or creative work requiring engineering education, training and experience and the application of special [**759] knowledge of the mathematical, physical and engineering sciences of such professional services or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, industrial buildings, structures, machines, equipment, processes, works, or projects."

No definition of any particular branch of engineering is contained in the statute, and no standards are fixed and determined by which a classification could be made. Section 11 of the Act provides in part:

"The engineering branches in which the registrant may be listed as having qualified for registration are the following: 'Agricultural Engineering,' 'Chemical Engineering,' 'Civil Engineering,' 'Electrical Engineering,' 'Mechanical Engineering,' 'Mining Engineering' and 'Structural Engineering.'"

No standards are fixed by the Act which shall be applied in determining the distinctions to be drawn between these various specializations of the broad field of engineering. Without question, many fundamental scientific principles are common to all of them, and every field of the profession overlaps into another. Without standards fixed by the law, the discretion to declare what the law is, is delegated to the board. This cannot legally be done.

Other instances in which there is a total absence of adequate standards are found in the following portions of the statute: In section 12 are the following provisions, the objectionable portions of which we have italicised: "The following shall be considered as minimum evidence satisfactory to the Board that the applicant is qualified for registration as a professional engineer, or land surveyor, or for certification as an engineer-in-training, [*177] respectively: (1) As a professional engineer: a. Graduation in an approved engineering curriculum of four years or more from a school or college approved by the Board as of satisfactory standing; and a specific record of an additional four years or more of experience in engineering work of a character satisfactory to the Board, and indicating that the applicant is competent to practice engineering (in counting years of experience, the Board at its discretion may give credit, not in excess of one year, for satisfactory graduate study in engineering), provided that in a case where the evidence presented in the application does not appear to the Board conclusive *nor warranting the* issuing of a certificate of registration, the applicant may be required to present further evidence *for the consideration of the Board*, and may also be required to pass on oral or written examination, or both, *as the Board may determine*; or

"b. A specific record of eight years or more of experience in engineering work *of a character satisfactory to the Board* and indicating that the applicant is competent to practice engineering; and successfully passing a written, or written and oral, examination designed to show knowledge and skill approximating that attained through graduation in an approved four-year engineering curriculum; or

"c. A specific record of twelve years or more of *lawful* practice in engineering work *of a character satisfactory to the Board* and indicating that the applicant is competent to practice engineering *and provided applicant is not less than thirty-five years of age*.

"(3) As a Land Surveyor: a. Graduation from a school or college *approved by the Board* as of satisfactory standing, including the completion of *an approved* course in surveying; and an additional two years or more of experience in land surveying work *of a character satisfactory to the Board* and indicating that the applicant is competent to practice land surveying; or [*178] [**760] b. A specific record of six years or

more experience *of a character satisfactory to the Board* c. A specific record of ten years or more of *lawful* practice in land surveying work *of a character satisfactory to the Board and provided applicant is not less than thirty years of age.*"

[3] A study of these provisions leads inescapably to the conclusion that upon the whole question of qualifications for registration of engineers, there has been an illegal delegation of legislative authority to the board. The applicable law is stated in the opinion of this court in *Sapero v. State Board of Medical Examiners*, 90 Colo. 568, 11P. 2d 555, as follows:

"The general assembly may not delegate the power to make a law; but it may delegate power to determine some fact or a state of things upon which the law, as prescribed, depends. *Colorado and Southern Railway Co. v. State Railroad Commission*, 54 Colo. 64, 84, 129 Pac. 506; *Field v. Clark*, 143 U.S. 649, 694, 12 Sup. Ct. 495, 36 L. Ed. 294. See also 48 C.J., page 1096, section 64, as applied to physicians and surgeons.

[4] "The subject of nondelegable powers covers a wide range, but we adopt the concise statement employed by our highest court in *Field v. Clark, supra*, at pages 693, 694 of its opinion, which reads: "'The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.'"

The judgment is affirmed.